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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/775,287	02/10/2004	David M. Carrizales JR.		1166
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EXAMINER
CONLEY, SEAN EVERETT

ART UNIT	PAPER NUMBER
1744	

DATE MAILED: 07/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/775,287

Applicant(s)

CARRIZALES, DAVID M.

Examiner

Sean E. Conley

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 April 2006 and 08 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 2/10/04 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. The amendment filed May 8, 2006 has been received and considered for examination. Claims 1-10 are pending.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 4-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Hayashi (JP 07255587 A).

Regarding claim 1, Hayashi discloses a device (1) having an illuminating element (lamps (4)) and an aromatic material burning element (incense) comprising: an incense housing member (inner container (3)) disposed in a base member (body (2)) having a light member (multiple lamps (4)) therein; said incense housing member (3) having a wall, a closed bottom and an open top forming a chamber (see figure 3); and an incense holder (bottom of crevice (6) formed in container (3)) for retaining an incense element in said chamber (see figures 1-4; paragraphs [0005], [0007]-[0012]).

Regarding claim 2, Hayashi discloses that the lamps (4) are located in a cavity (lighting space (7)) of base member (body (2)) and are interconnected with a power source via cords (4a) and are made to turn and off thus indicated that there is a switch to turn the lights on and off (see figure 2-4 and paragraphs [0007], [0011]-[0013]).

Regarding claim 4, Hayashi discloses that the base (body (2)) has an upper cavity (upper inside portion of base (2)) for receipt of the incense housing member (container (3)) and a lower cavity (lower inside portion of base (2)) with a light member (lamps (4)) disposed therein (see figures 2 and 4).

Regarding claim 5, Hayashi discloses that the upper cavity includes a step portion (the step formed at the periphery of opening (2a) of the body (2)) to support the incense housing member (container (3)) (see figures 2 and 3; paragraph [0010]).

Regarding claim 6, Hayashi discloses a mounting element (sockets for bulbs (W) that form the lamps (4)) that are positioned to direct light upwardly into and out of the incense housing member (container (3)) when the housing member (3) is constructed of a translucent or transparent material (see figures 1-4; paragraph [0011]).

Regarding claim 7, Hayashi discloses that the incense housing member (inner container (3)) is a tubular shape (see figure 3).

3. Claims 1 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Rhodes (U.S. Patent No. 1,357,824).

Regarding claim 1, Rhodes discloses a device having an illuminating element (bulbs (6) and (7)) and an aromatic material burning element (incense) comprising: an

Art Unit: 1744

incense housing member (cup (12)) disposed in a base member formed by base (2) with a fitting (3), arms (5, 8), and rings (9, 11), further having a light member (bulbs (6) and (7)) therein; said incense housing member (cup (12)) having a wall, a closed bottom and an open top forming a chamber (see figure 1); and an incense holder (bottom of cup (12)) for retaining an incense element in said chamber (see figures 1-2; columns 1 and 2).

Regarding claim 7, Rhodes discloses an incense housing member (cup (12)) that is tubular in shape (see figure 1).

4. Claims 1, 2, and 4-6 are rejected under 35 U.S.C. 102(a) as being anticipated by Nomizu et al. (JP 2002306320 A).

Regarding claim 1, Nomizu et al. discloses a device having an illuminating element (bulb (10)) and an aromatic material burning element (incense) comprising: an incense housing member (pan (17)) disposed in a base member (body (1) made up of body parts (2) and (3)) having a light member (bulb (10)) therein; said incense housing member (pan (17)) having a wall, a closed bottom and an open top forming a chamber (see figures 2 and 3); and an incense holder (bottom of crevice (18) formed pan (17)) for retaining an incense element in said chamber (see figures 1-3; paragraphs [0009]-[0012]).

Regarding claim 2, Nomizu et al. discloses that the base member (body (1)) has a cavity (formed by lower body (2)) with a light source (bulb (10)) interconnected with a power source and a switch (see figures 1-3; paragraphs [0013]-[0014]).

Regarding claim 4, Nomizu et al. discloses that the base (body (1)) has an upper cavity (formed by upper body portion (3)) for receipt of the incense housing member (pan (17)) and a lower cavity (formed by lower body portion (2)) with a light member (bulb (10)) disposed therein (see figures 1-3).

Regarding claim 5, Nomizu et al. discloses that the upper cavity has a step portion (14) for support of the incense housing member (pan (17)) (see figures 2 and 3).

Regarding claim 6, Nomizu et al. discloses a mounting element (socket (11)) that is positioned to direct light upwardly into and out of the incense housing member (pan (17)) when the housing member (17) is constructed of a translucent or transparent material (see figures 2-3; paragraph [0012]).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
5. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hayashi as applied to claim 2 above, and further in view of Herold (U.S. Patent Application Publication US 2004/0003821 A1).

Hayashi fails to teach a power source that is a battery. Harold discloses a device with an incense holder (80) that is supported by enclosure (40) in a position above a tray (10) so that ashes from burning incense fall into the tray. The device further includes an illumination means (bulb (30)) that is energized by power from a utility, as shown in figures 3-5, or from a battery source, as shown in figure 2 (see figures; paragraph [0028]).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Hayashi and replace the external power source with a functionally equivalent viable alternative means such as a battery as taught by the device to Herold in order to make the device portable.

6. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hayashi as applied to claim 1 above, and further in view of Hsiao (U.S. Patent No. 5,563,981).

Hayashi fails to teach an incense housing member (inner container (3)) that is transparent. Hsiao discloses an electric incense burner structure that includes a burner housing (20) and a lid (10) both of which are transparent so that the user can see at any time whether the essence (incense) inside has been volatilized (see figures 3 and 4; col. 2, lines 57-60).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Hayashi and make the incense housing member (inner container (3)) out of a transparent material as taught by Hsiao so that the user can visually determine when and if the incense has been volatilized.

7. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hayashi as applied to claim 6 above, and further in view of White (U.S. Patent No. 2,131,460).

Hayashi fails to specifically teach the color of the light source within the base. White discloses an incense burner that comprises a base having a light bulb (10) providing illumination to simulate an erupting volcano using a flame colored light bulb and a burnable incense element (7) for providing incense smoke (see figure; columns 1 and 2).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Hayashi and use a colored bulb such as a flame colored bulb as taught by White in order to provide a desired visual effect such as simulating a flame.

8. Claims 8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hayashi as applied to claim 1 above, and further in view of Newman (U.S. Patent No. 5,215,719).

Hayashi fails to teach an incense housing member that is transparent and includes an incense holder disposed on an open top edge to suspend an incense

Art Unit: 1744

element. Newman discloses an incense burner (10) that comprises an upright cylindrical tube (12) supported on and coupled to a base (14). The connection between the base (14) and the tubular member (12) seals a first end of the tubular member in a closed engagement (see figure 1; col. 2, lines 30-40). A second end of the tubular member remains open and is provided with a clip member (20) for engaging onto an incense stick (22). The clip member (20) is supported by a peripheral edge of the open end of tubular member (12) (see figure 1; col. 2, lines 59-67). Additionally, the tubular member is preferably made of a plastic material, such as a clear, translucent, colored, or opaque polycarbonate material, or may be made of metal. The base (14) may also be made of a plastic material or a metal material (see col. 3, lines 7-26).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Hayashi and replace the incense housing member (inner container (3)) with a transparent housing member including an incense holder as taught by Newman in order to burn stick incense and prevent the incense stick from falling over or out of the incense housing member (3).

9. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nomizu et al. as applied to claim 1 above in view of Tani (JP 2002223931 A).

Nomizu et al. fails to teach an incense holder disposed on an open top edge to suspend an incense element.

Tani discloses a device for use in combination with an incense housing member (container (1)). The device comprises an incense holder (see figures 2-4) disposed on

Art Unit: 1744

an open top edge of an incense housing member in order to suspend an incense stick (8) in an incense burning device (see figures 2-4; paragraphs [0006]-[0014]). This device prevents the incense stick from falling and ensures that the incense stick is completely burned.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Nomizu et al. and replace the incense housing member (pan (17)) with a housing member including an incense holder mounted to an open top edge to suspend the incense element as taught by Tani in order to completely burn an incense stick and prevent it from falling.

10. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nomizu et al. as applied to claim 6 above, and further in view of White (U.S. Patent No. 2,131,460).

Nomizu et al. fails to specifically teach the color of the light source within the base. White discloses an incense burner that comprises a base having a light bulb (10) providing illumination to simulate an erupting volcano using a flame colored light bulb and a burnable incense element (7) for providing incense smoke (see figure; columns 1 and 2).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Nomizu et al. and use a colored bulb such as a flame colored bulb as taught by White in order to provide a desired visual effect such as simulating a flame.

11. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nomizu et al. as applied to claim 2 above, and further in view of Herold (U.S. Patent Application Publication US 2004/0003821 A1).

Nomizu et al. fails to teach a power source that is a battery. Harold discloses a device with an incense holder (80) that is supported by enclosure (40) in a position above a tray (10) so that ashes from burning incense fall into the tray. The device further includes an illumination means (bulb (30)) that is energized by power from a utility, as shown in figures 3-5, or from a battery source, as shown in figure 2 (see figures; paragraph [0028]).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Nomizu et al. and replace the external power source with a functionally equivalent viable alternative means such as a battery as taught by the device to Herold in order to make the device portable.

Response to Arguments

12. Applicant's arguments, see pages 5-7, filed April 24, 2006, with respect to the rejection(s) of claim(s) 1-9 under 35 U.S.C. 102(b) and 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Hayashi (JP 07255587 A), Herold, Hsiao, White, Rhodes (U.S. Patent No. 1,357,824),

Nomizu et al. (JP 2002306320 A), Tani (JP 2002223931 A), and Newman (U.S. Patent No. 5,215,719).

Conclusion

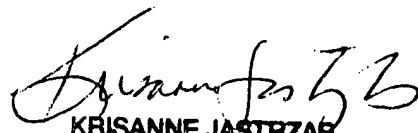
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sean E. Conley whose telephone number is 571-272-8414. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys Corcoran can be reached on 571-272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SEC

July 13, 2006


KRISANNE JASTRZAB
PRIMARY EXAMINER